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ABSTRACT

This document reviews the arguments and the ruling in the Lau v. Nichols case, and the general legal foundation for bilingual education. On March 25, 1970, a suit was filed by 13 non-English-speaking Chinese students in the District Court in San Francisco, on behalf of nearly 3,000 Chinese-speaking students, against the San Francisco Unified School District. The complaints were: (1) non-English-speaking students were being denied their rights to education because they couldn't function in the medium of instruction; and (2) these students were being doomed to becoming dropouts, and to unemployment, as a result of their language problems. Basic issues were whether the San Francisco school district should be required to provide special instruction in English, and whether instruction should be handled by bilingual Chinese-speaking teachers. While the school district and the federal court argued that the school district had no responsibility to rectify the situation, the Supreme Court ruled that the failure of the school system to provide English-language instruction to non-English-speaking students constitutes denial of opportunity to participate in the educational program. Furthermore, it was recognized both at the federal and state level that to be effective, the instruction must be bilingual. (CLK)

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# THE LAU V. NICHOLS SUPREME COURT DECISION OF 1974

Edward H. Steinman
University of Santa Clara

December 10, 1974

## TESTIMONY OF EDWARD H. STEINMAN

## BEFORE THE COMMITTEE ON WAYS AND MEANS OF

## THE CALIFORNIA STATE ASSEMBLY

My name is Edward H. Steinman. I am a professor of law at the University of Santa Clara School of Law, and the attorney for the non-English-speaking Chinese-American children whose rights were vindicated in the United States Supreme Court decision in Lau v. Nichols. I wish to thank you for inviting me to address the Assembly Ways and Means Committee on the meaning of the Lau decision and its mandate to provide hundreds of thousands of children in California with bilingual education. Pursuant to your request, my testimony will focus on the nature of the arguments and ruling in the Lau case and on the general legal foundation for bilingual education.

### INTRODUCTION

On January 21, 1974, the United States Supreme Court unanimously ruled that the San Francisco Unified School District illegally discriminated against nearly 2,000 non-English-speaking Chinese students by failing to help them surmount the language barrier. By requiring these children to sit and languish in regular English-language classes, the Supreme Court found the school district had denied them "a meaningful opportunity to participate in the public educational program."

While the Lau case involved thousands of non-English-speaking Chinese children in San Francisco, the Supreme Court decision carves out new educational rights for the approximately 5,000,000 non-English-speaking children throughout the country, including the estimated 500,000 such youngsters who reside in California. To more fully understand why the United States Supreme Court reached such a dramatic and significant decision, I would like to discuss briefly the origins of this lawsuit and the events that occurred as the case travelled up the "legal ladder" to the Supreme Court.

## The Nature of the Lawsuit

On March 25, 1970, 13 non-English-speaking Chinese-American students filed a lawsuit in the United States District Court in San Francisco on behalf of nearly 3,000 Chinese-speaking students against the San Francisco Unified School District. The complaint alleged that these Chinese-speaking children were being denied their rights to an education because they were unable to comprehend or speak the English-language in which their classes were taught. By denying these children special instruction in English, the school district was not only violating their rights to an education and to equal educational opportunities as guaranteed by the Constitutions of the United States and State of California and by federal and state legislation, but the school district, according to the complaint, was also "dooming these chidren to become dropouts and to join the rolls of the unemployed."

In their complaint, the non-English-speaking Chinese-American students raised two basic issues: first, whether the San Francisco Unified School District was required to provide them with special instruction in English; and secondly, whether such special instruction in English must be taught by bilingual, Chinese-speaking teachers. As for relief, the students requested that the federal court order the school district to provide special English-language classes with bilingual teachers for all non-English-speaking students. Without bilingual teachers, the lawsuit contended, any "special" instruction in English would be a fruitless gesture, since students would be merely parrotting teachers rather than learning English.

## The Reasons for the Lawsuit

Like so many lawsuits, the Lau case was brought because of a deep sense of frustration; it was the community's last resort after all other avenues had been exhausted in hopes of overcoming the serious educational harms suffered by non-English-speaking children. Were the problem not so serious, one could easily engage in satire to describe the dilemma faced by these children and their parents. The law of the State of California required that these children attend school; thus, they went. Yet, while they were unable to speak or understand the English language, all the instruction they received -- for 6 hours a day, 5 days a week, 36 weeks a year -- was in English, as were all the books and all the visual materials that were used. Even though we are English-speaking individuals, it should not be hard for us to realize that for these children education was -- and unfortunately, for hundreds of thousands of children in California, still is -- mere physical presence, as audience to a strange play which they do not understand. Ironically, these children were foreclosed from the very

essence of what education is about: communication. Children can profit from education only when they are able to understand the instruction, ask and answer questions, and speak with their classmates and teachers. For children who do not understand English, there can be no educational opportunity.

For years the Chinese community in San Francisco employed meetings, negotiations, studies, demonstrations, and community alternative programs to try and rectify the educational deprivations suffered by non-English-speaking children. All these efforts invariably resulted in token gestures, in the form of bandaids here and there on the part of a school administration which had neither the interest, the willingness, the competence, nor the commitment to cope with the thousands of non-English-speaking children. Ironically, such inaction by the school district was accompanied by an explicit recognition of the seriousness of the problem. The school district in 1969 admitted:

> When these [Chinese-speaking youngsters] are placed in grade levels according to their age and are expected to compete with their English speaking peers, they are frustrated by their inability to understand the regular work. . . . For [these] children, the lack of English means poor performance in school. The secondary student is almost inevitably doomed to be a dropout and another unemployable in the ghetto.

Moreover, during the trial of the Lau case, the school district stipulated that in 1970 there were 2,856 Chinese-speaking students in the district who needed special instruction in English, but that 1,790 of these children received no special help or instruction at all. The school district further stipulated that of the 1,066 Chinese-speaking students who did receive some special help, nearly 2/3 received such help on a part-time, 50-minutes-a-day basis. Finally, only 260 of those 1,066 Chinese-speaking students receiving special instruction in English were taught by bilingual, Chinese-speaking teachers.

Significantly, this stipulated data stemmed from a survey conducted by the school district in December, 1969, which was collected without the development of any objective standard criteria. Instead, the subjective judgment of the individual classroom teachers served as the basis for the survey. Moreover, placement of these students into the few special English classes was generally arbitrary, based on neither specially designed testing procedures nor ascertainable standards. Except for those few students placed in these few special classes, most of the Chinese-speaking students needing help in English were placed in regular classes, taught only in English, where they could not adequately compete with their peers. The result -- as the School District itself admitted -- was eventual

frustration, discouragement, resentment, truancy, delinquency and dropout. Similarly, teachers and counselors who worked with Chinese-speaking students were equally frustrated and helpless, as their preparation and training proved useless when working with non-English-speaking youngsters.

## The Trial Court Decision

Following months of legal discovery and investigation, a hearing was held in the Lau case before United States District Court Judge Lloyd Burke. At the hearing, the non-English-speaking Chinese plaintiffs presented testimony and documentation portraying their rights and needs to receive special English classes taught by bilingual teachers. The evidence demonstrated that these children could not learn English unless it was taught to them by persons who have a facility in the only language they understand: Chinese. In rebuttal, the school district admitted the grave needs of these children to receive special instruction, but contended that such needs did not constitute legal rights. The school district argued that its obligations to these children were satisfied by providing them the same educational setting offered to other children in the district. Though the school district acknowledged its desire to provide more special classes for non-English-speaking children, it said such classes would be offered "gratuitously," as money and personnel permitted, rather than as a matter of right and duty.

In its decision, the United States District Court agreed with the school district and denied the non-English-speaking children any relief. The court expressed sympathy for the plight of the students, but concluded that their rights to an education and to equal educational opportunities had been satisfied as "they received the same education made available on the same terms and conditions to the other tens of thousands of students in the San Francisco Unified School District." Though the plaintiffs contended that the "surface" equality of identical textbooks, teachers, and classrooms afforded no education to non-English-speaking children, the federal court ruled the school district had no legal duty to rectify this situation. Access to the same educational system provided others -- regardless of whether any educational benefits could be received -- was the extent of a child's right to an education, according to the trial court.

During the trial, both the school district and the federal court repeatedly observed that the language problem was the result of a recent escalation in the number of new immigrants entering the school system. Since the school district had no control over this country's immigration policies, the federal court indicated this further absolved the district from any responsibility. Yet, while it may be easy to blame the language problem in San Francisco solely

on recent Chinese immigrants, this would be both inaccurate and unjustifiable. Research studies indicate that the language problem has long been prevalent among Chinese students, both native-born and foreign-born in San Francisco. Historically, discriminatory legislation and extensive vilification and abuse forced the Chinese into a state of ghetto existence continuing to this day. Many Chinese children -- both foreign-born and native-born -- enter school with insufficient or no English. It is further significant that native-born Chinese students with this language problem are found at every level in society, including as students in our state college and university systems.

Thus, it is not surprising that 7 of the 13 named plaintiffs in the Lau case are American-born Chinese citizens. The school district's own studies and reports over the past three decades showed that the language problem in the schools existed long before the major influx of Chinese immigrants between 1965-1970. While clearly the recent influx of Chinese immigrants has aggravated the situation, it is surely not the cause of the problem existing in San Francisco schools. Similarly, it would be foolish and unjustifiable to attribute the problems of non-English-speaking students throughout the state to recent immigration from Spanish-speaking, Chinese-speaking or other non-English-speaking countries. The long history in both this state and this country of the educational deprivations suffered by non-English-speaking children belies any such argument.

## The Appellate Court Decision

The non-English-speaking children appealed the decision of the federal district court to the United States Court of Appeals for the Ninth Circuit. Their contention that the trial court decision should be reversed was supported by the United States government, which filed an amicus curiae brief with the Ninth Circuit Court of Appeals. In its brief, the federal government argued that the United States Constitution and Civil Rights Act of 1964 required that non-English-speaking children be given educational opportunities which are tailored to their particular needs.

On January 8, 1973, a three-judge panel of the Ninth Circuit Court of Appeals affirmed the lower court decision (483 F.2d 791 (9th Cir. 1973)). The appellate court accepted the school district's argument that its responsibility to non-English-speaking children "extends no further than to provide them with the same facilities, textbooks, teachers, and curriculum as is provided to other children in the district." Beyond this legal conclusion, the court offered some comments which demonstrated a remarkably narrow view of the role of education in this country. First, the court callously observed that the problems suffered by the children were "not the result of laws enacted by the State . . . but the result of deficiencies created by the [children] themselves in failing to learn the English language." Such a

statement -- ascribing fault to a young child because of "his failure to learn English" -- not only suggests that the "sins" of the fathers be visited upon the children (if one wishes to arguably place "blame" on the parents themselves for failing to teach their children English). It further labels the child "sinful" for not absorbing, on his own, the language of the society into which he has been cast. Incredibly, had the Supreme Court not accepted the Lau case and reversed this appellate court opinion, such a statement would now be the law in the federal courts of the State of California.

The appellate court then went on to paint a picture of the American educational process which would relegate children who are "different" (and, because of that difference, denied an education) only to non-judicial remedies:

> Every student brings to the starting line of his educational career different advantages and disadvantages caused in part by social, economic and cultural background, created and contributed completely apart from any contribution by the school system. That some of these may be impediments which can be overcome does not amount to a 'denial' by the [school district] of educational opportunities . . . should the [district] fail to give them special attention.

## The United States Supreme Court Decision

Faced with the devastating appellate court decision, the non-English-speaking children petitioned the United States Supreme Court to take their case and reverse the appellate court. On June 12, 1973, the United States Supreme Court granted the petition to hear the case, and oral argument was heard on December 10, 1973. The United States government continued to support the children at the Supreme Court level by filing an amicus curiae brief recommending the reversal of the lower court opinion. In addition, amicus curiae briefs in support of the non-English-speaking Chinese-American students were also filed by numerous organizations throughout the country, including the National Education Association, the Harvard University Center for Law and Education, the Lawyers' Committee for Civil Rights under Law, the Mexican-American Legal Defense, and Education Fund and the Puerto Rican Legal Defense and Education Fund.

On January 21, 1974, the United States Supreme Court issued its unanimous decision reversing the appellate court opinion (414 U.S. 563 (1974)). Relying on the Civil Rights Act of 1964 (which both the federal trial and appellate courts found to be of no significance), the Supreme Court ruled that the failure of any school system to provide English-language instruction to its non-English-speaking students constitutes a denial of "a meaningful opportunity

to participate in the education program." Since every school district in the United States receives some federal education funds, the Court decision simply means that the 5,000,000 school children in the United States who now attend school with English-language deficiencies are legally entitled to a meaningful opportunity to participate in public education.

The Supreme Court decision can be viewed from many perspectives. As to the particular language of the decision, the Court quickly diffused the narrow definition of "equality" propounded by the lower courts. Recognizing that there is no greater inequality that the equal treatment of unequals, the Supreme Court said:

> [T]here is no equality of treatment merely by providing students with the same facilities, text books, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.

The Supreme Court was openly astonished that a school district would even suggest that requiring non-English-speaking children to sit and languish in regular English-language classrooms amounts to an "education." Viewing the evidence as a whole, the Court said:

> Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that before a child can effectively participate in the educational program he must have already acquired those basic skills is to make a mockery of public education. (Emphasis added.)

Casting itself directly into the plight confronting non-English-speaking children, the Court concluded that "[w]e know that those who do not understand English are certain to find their classroom experience wholly incomprehensible and in no way meaningful."

Naturally, the importance of the Supreme Court decision goes beyond the mere words on a printed page. Given the current composition of the United States Supreme Court, one should not underestimate the significance of a unanimous decision in a case involving the civil rights of millions of children. The Court, in Lau, abandoned the relative judicial conservatism it has displayed the past few years in the areas of education and civil rights. Its strong decision in Lau speaks loudly and clearly of the importance which the Court places on the rights of non-English-speaking children. Moreover, unlike its decisions of the past few years, the Court in Lau was not concerned with the intentions or motivations of a school district. Regardless of how much good faith a school district might be exercising in trying to meet the problem, the only relevant factor

is whether the child receives a "meaningful" education or suffers harm from its absence. Coupled again with the Court's unanimous stance, this indicates that no excuses will be tolerated in effectuating the rights of these children. The test is whether a child can "effectively participate" and receive a "meaningful" education, not whether a school district is attempting to do the best it can. Anything short of a "meaningful" education perpetuates the "mockery" which the Supreme Court found so cruel, anomalous and illegal.

## The Legal Foundation for Bilingual Education

Since the Supreme Court unanimously ruled that the rights of the non-English-speaking Chinese children to an education were being denied, the Court deliberately did not explore the nature of the required remedy. Instead, the Supreme Court remanded the case back to the United States District Court in San Francisco to fashion "appropriate relief" in the case. In May of this year, the District Court approved the creation of a Citywide Bilingual Education Task Force, which is working with the plaintiffs, the school district, and the federal government to formulate a master plan for San Francisco. The bilingual plan is expected to be completed early in 1975. Nevertheless, the very words of the Supreme Court decision demonstrate that the rights of non-English-speaking children can be achieved only through comprehensive bilingual instruction given by bilingual teachers. This obvious requirement is bolstered by the unanimous interpretations during the past 11 months by courts, legislators, and educational leaders of the Lau decision as mandating bilingual education.

The reasons for such uniform interpretation of the decision are not surprising. The Supreme Court in Lau expressed concern with providing non-English-speaking children a "meaningful education" and "effective participation in the educational program." For a school district to utilize non-bilingual instruction -- in which children are traditionally given supplemental instruction sessions in English for 30 to 50 minutes a day in a regular classroom -- not only guarantees the continued absence of a "meaningful" education, but produces the very "mockery" to which Lau is addressed. In essence, the non-bilingual instruction offers the child, except for a few minutes each day, the same facilities, books, and teachers as those who understand English -- the very situation found legally intolerable by the Supreme Court. Instruction for non-English-speaking children which is non-bilingual belies the wealth of research that shows the best way to learn another language is to utilize the one already known. It ignores what the child already knows and can comprehend in his native language and, consequently, treats the child as if he knows nothing (or, worse, as if he were stupid). To employ anything short of bilingual education is not only educationally unsound and psychologically repressive, but is now in direct violation of a non-English-speaking child's right to a basic education.

The court decisions which have applied and interpreted Lau have all concluded that Lau requires bilingual education to overcome the deprivations suffered by non-English-speaking children. In Serna v. Portales New Mexico School District, 499 F.2d 1147 (10th Cir. July 19, 1974), the United States Court of Appeals for the Tenth Circuit (by and large a conservative court) ruled that bilingual education is the only appropriate remedy under the Lau decision. The Serna court even imposed a duty on school districts with non-English-speaking children to apply for bilingual education monies under available state or federal programs. In Aspira v. Board of Education of the City of New York, ___ F. Supp. ___ (S.D.N.Y. August 29, 1974), the federal district court relied on the Lau decision in sanctioning the immediate implementation of a complete bilingual/bicultural education program for nearly 200,000 Spanish-speaking Puerto Rican children in New York City. Similarly, the other court decision which has interpreted Lau, Keyes v. Denver Unified School District, ___ F. Supp. ___ (D. Colo., April 9, 1974), also held that bilingual/bicultural education -- in which the teacher uses the child's native language as well as English -- is required by Lau. The federal court in Keyes held the Lau decision demonstrates that it is "ineffective to require non-English-speaking children to learn a language with which they are unfamiliar, and at the same time acquire normal basic learning skills which are taught through the medium of that unfamiliar language."

In addition to judicial intepretations of Lau, federal and state governments have reached the identical conclusion that the Supreme Court decision requires bilingual education. Even before the Lau decision, the Office for Civil Rights of the United States Department of Health, Education and Welfare, issued regulations, pursuant to the Civil Rights Act of 1964, to eliminate discrimination against national-origin minority students. Specifically, these regulations required school districts to take "affirmative steps" to rectify the language deficiencies of non-English-speaking children who are excluded from "effective participation" in educational programs. In its efforts to enforce these regulations, the Office for Civil Rights developed a number of bilingual/bicultural program models for implementation by school districts to equalize the educational opportunity for non-English-speaking children. According to J. Stanley Pottinger, then director of the Office for Civil Rights, the regulations:

> reflected the operational philosophy that school districts should create a culturally relevant educational approach to assure equal access of all children to its full benefits. The burden, according to this philosophy, should be on the school to adapt its educational approach so that the culture, language and learning style of all children in the school (not just those of Anglo, middle class background) are accepted and valued.

> Children should not be penalized for cultural and linguistic deficiencies, nor should they bear a burden to conform to a school-sanctioned culture by abandoning their own.

Since the Lau decision was issued last January, Casper Weinberger, Secretary of the Department of Health, Education and Welfare, has reaffirmed this position by stating that the Lau decision requires bilingual education. Moreover, the Department of Health, Education and Welfare supported the recently adopted amendments to the federal Elementary and Secondary Education Act, which authorizes a massive federal financial commitment to utilize bilingual/bicultural education as the means of providing equal education opportunities to non-English-speaking children.

On the state level, the Lau decision has also been interpreted as requiring bilingual education. Less than two months after the decision was issued, State Superintendent of Public Instruction Wilson Riles testified before the General Education Subcommittee of the United States House of Representatives on the subject of bilingual education. Superintendent Riles told the subcommittee that Lau was a "wise" decision which requires that non-English-speaking children are entitled to bilingual programs "as a legal right." Even before the Lau decision, the State of California recognized the need -- and success -- of bilingual education for non-English-speaking children. California was one of the first states in the Union to pass legislation authorizing funds for the development of bilingual education (AB 116 and AB 2284); today, 15 other states also have legislation providing bilingual programs. In fact, the California State Legislature has explicitly recognized that bilingual education is the only remedy which can overcome the language problems of non-English-speaking children. In passing the Bilingual Education Act of 1972 (Calif. Educ. Code sections 5761-5764.5), the legislature declared:

> [I]nability to speak, read and comprehend English presents a formidable obstacle to classroom learning and participation which can be removed only by instruction and a training in the pupils' dominant language. . . . The legislature further recognizes that high quality bilingual programs in the public schools would allow the acquisition by students of educational concepts and skills needed to improve the development of human resources in this state. . . . The primary goals of such [bilingual] programs shall be to develop competence in two languages for all participating pupils, to provide positive reinforcement of the self-image of participating children, and to develop intergroup and intercultural awareness among pupils, parents and the staff in participating school districts. (Emphasis added)

The Act also outlines in great detail what constitutes a bilingual education: the required use of bilingual teachers, planning and evaluation procedures, etc. In addition, the Commission for Teacher Preparation and Licensing, under earlier legislation, was mandated by the State Legislature to set up standards for the certification of teaching personnel for bilingual classes. On May 9, 1973, the Commission issued the "Bilingual/Cross-Cultural Specialist Guidelines" to assist educational institutions in developing approved programs for preparation of the Bilingual/Cross-Cultural Specialist.

Clearly, as this Committee is well aware, the road to providing non-English-speaking children with bilingual education will not be totally a smooth one. Neither a United States Supreme Court decision requiring bilingual education nor legislative actions mandating a similar requirement are self-executing. Yet, this Committee should be aware that many of the obstacles which will be thrown in the path of achieving bilingual education have no legal significance in view of the Supreme Court decision in the Lau case. Naturally, the main barrier which will be erected to thwart the Lau decision will be the alleged absence of money. School districts are already suggesting that they need not satisfy the Lau requirement of bilingual education until and unless sufficient state and federal funds are provided. While I am most hopeful that this Committee will recommend -- and that the California Legislature will pass -- large appropriations for bilingual education in this state, I think it is important to recognize that any arguably potential shortage of funds will not serve as an excuse to avoid the Lau requirements.

First, it should be recognized that the Supreme Court of the United States was well aware of the "money argument," since the San Francisco Unified School District continually and forcefully contended there would be insufficient funds to implement a mandated bilingual education order. Since the Supreme Court decision does not even mention this alleged problem of money, its silence must stand as an implicit rejection of the school district's contention. And, given the evidence before the Supreme Court, such rejection was surely expected. Though no one contends that bilingual education may not cost extra funds, the Supreme Court obviously recognized the anomalous position in which the San Francisco School District -- and other school districts throughout the country -- place themselves. At the time of the oral argument in the Lau case, the San Francisco Unified School District admitted there were 5,000 children (including the thousands of Chinese-speaking students represented in the Lau action) in its schools who were non-English-speaking and who were languishing in regular classrooms, unable to fathom the instruction offered to them. Similarly, at the time of oral argument, San Francisco was spending approximately $1,900 per student for educational services. While this $1,900 figure is clearly an average (that varies up or down depending upon the nature of education received by a child, the type of educational plant, the salaries of teachers, etc.), it nevertheless represented the average amount of

money spent on each of 5,000 children who were admittedly receiving zero education. Thus, at the same time San Francisco was arguing that it would have insufficient funds to implement bilingual education, it was admitting to the United States Supreme Court that it was wasting approximately $9.5 million a year on these 5,000 non-English-speaking children!

Secondly, Lau does not tolerate "money" as an excuse, since the decision is premised on the Civil Rights Act of 1964. While every school district in the United States receives some federal funding (and hence falls under the Lau decision), the federal financial assistance is permissive, not mandatory. Clearly, no thinking person would wish to see these federal funds cut off should Lau not be followed; such would be akin to cutting off one's nose to spite one's face. Yet, the point must be emphasized that Lau requires school districts which receive any federal education funds to provide bilingual education, regardless of their own arguably potential budgetary constraints. (It has even been suggested that all federal funds received in the State of California might be in jeopardy should the Lau decision be violated. Since the State Department of Education serves as the conduit and recipient of many of these federal funds, the State of California itself may have an affirmative obligation to enforce the Lau decision in each of the state's school districts -- and suffer the consequences of non-enforcement.)

Besides the argument of insufficient funds, school systems have also sought to avoid the Lau mandate of bilingual education by stating that the decision applies only to the totally non-English-speaking child. Since many children are classified as limited-English-speaking, the argument runs that Lau does not provide them any educational rights. Yet, the Supreme Court purposely drew no lines between various types of proficiencies or deficiencies in English. The decision explicitly covers "students in the school who spoke little or no English" and whose inability to "understand English effectively foreclosed them from any meaningful education."

Finally, because of the publicity given the concurring opinion of Mr. Justice Blackmun in Lau, some school districts have contended that the decision only applies when there are "many" children who do not understand English. In his concurrence, joined by Mr. Chief Justice Burger, Mr. Justice Blackmun stated:

> when in another case, we are concerned with a very few youngsters, or with just a single child who speaks only German or Polish or Spanish, or any language, other than English, I would not regard today's decision . . . as conclusive upon the issue.

Realistically, of course, most of the non-English-speaking children in this state and nation do not live in underpopulated, isolated areas, but live with, and among, scores of other non-English-speaking children. Similarly, while some children may only be proficient in a relatively uncommon language like Polish or Greek, the vast majority (approximately 90 percent) of the non-English-speaking children in this country come from Spanish-speaking environments. Finally, even if the situation hypothesized by Mr. Justice Blackmun should arise, it is important to recognize that 7 of the 9 Supreme Court judges -- by not joining his concurring opinion -- implicitly reject the importance of numbers. Again, the silence of this 7-person majority of the Supreme Court on this issue -- especially in the face of Mr. Justice Blackmun's specially grounded concurrence -- demonstrates that Lau applies to all non-English-speaking children, regardless of that child being the only one in a school district and/or coming from a background where a relatively uncommon language is spoken.

## CONCLUSION

The Lau decision stands as both a mandate and a challenge. It recognizes that school districts have affirmative obligations toward children who are different, who bring to the education arena barriers which must be overcome before the purposes of our educational system can be achieved. I am naturally most pleased that this Committee is conducting hearings on how to implement the Lau decision in California and on how to achieve the most effective bilingual education programs which develop the language competencies and improve the performance of children in our public schools. I urge you to recommend and support legislation which will make the Lau decision a reality today, and not merely an unfulfilled hope for the future. I will be most willing to work with your Committee or any other groups of individuals to help develop a comprehensive bill to guarantee meaningful bilingual education. We must respond positively to the Lau v. Nichols decision, and the California State Legislature now has the best chance to act in a timely and constructive manner.

Thank you for your time and attention.